

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

ANTONIO MARQUIS LATHON

PLAINTIFF

v.

Civil No. 06-5133

CORPORAL WASHBOURNE;
SHERIFF TIM HELDER;
OFFICER KERN; OFFICER ROBINSON;
and OFFICER CASINO

DEFENDANTS

ORDER

Defendants have filed a motion for summary judgment (Doc. 29). To assist plaintiff in responding to the summary judgment motion, the undersigned is propounding a questionnaire. The court will consider plaintiff's response to the questionnaire in issuing a report and recommendation on the summary judgment motion.

For this reason, Antonio Lathon is hereby directed to complete, sign, and return the attached response to defendants' summary judgment motion on or before **July 26, 2007**. **Plaintiff's failure to respond within the required period of time may subject this matter to dismissal for failure to comply with a court order.**

IT IS SO ORDERED this 18th day of June 2007.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE

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DEFENDANTS

RESPONSE TO SUMMARY JUDGMENT MOTION

TO: ANTONIO MARQUIS LATHON

These questions and answers will serve as your response to the motion for summary judgment filed by the defendants. You may use additional sheets of paper in responding to these questions. You must file this response by **July 26, 2007**.

1. You were booked into the Washington County Detention Center (WCDC) on November 16, 2005. You had been brought back from the Arkansas Department of Correction (ADC) for court proceedings.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to the Defendants' Exhibit 1.

2. You had been at the WCDC on three prior occasions.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1.

3. Your charges included aggravated assault, terroristic threatening, possession of controlled substances, and obstruction of governmental operations.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1.

4. Your medical questionnaire completed at the time of intake on November 16, 2005, indicated you had no health problems other than the fact that you were allergic to pollen.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 1.

5. On November 17, 2005, you requested information regarding who your lawyer was and you stated you needed your motion for discovery. You asked that your request be faxed to the public defender's office. Your request was faxed.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

6. On November 20, 2005, you submitted a grievance stating that Corporal Washbourne called you out of your pod and asked if you had said you were going to kick his a--. You replied: "No." You indicate Washbourne then tried to goad you into hitting him.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

7. When you did not hit Washbourne, you assert he said he would choke you're a--.

You indicate you replied: "So choke me."

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

8. You indicate Washbourne then told you to go back into your pod. As you were walking back into the pod, you assert he kicked you on the back of your foot. You state you tried to get his foot off of you and he then jumped you and proceeded to choke you. At this point, you state you were jumped on by four officers and kicked and punched.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

9. After the incident, you asserted your back was hurting, your neck was hurting, and your leg was bleeding. You stated Washbourne also kicked you in the testicles.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

10. Please describe in detail the amount of physical force used by each of the following defendants:

Washbourne:

Kern:

[illegible]

Robinson:

Casino:

Helder:

11. Please describe in detail: (a) the physical injuries you suffered as a result of the use of force; (b) the symptoms you experienced; (c) the severity of the symptoms; (d) whether you sought, or received, medical treatment as a result of the injuries; and (e) how long it took you to recover from the injuries.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

-10-

2.

13. When Washbourne entered s-block to distribute morning medication, the detainees were yelling and screaming at him because he was not serving trays.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

14. As Washbourne was doing medication, you made several offensive remarks and stated that if he was not in uniform you would beat him to death.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

15. Kern heard all the yelling and entered the block to check on Washbourne's safety.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page
2.

16. As Kern was leaving the block, you told Kern that he better not leave

Washbourne in there alone, something might happen.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page
2.

17. Kern asked you if that was a threat and you responded by asking Kern if it

sounded like a threat.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

2.

18. When Kern responded that it did, you stated: "whatever mother-----, f---- you."

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

2.

19. When Washbourne finished with the medication, he instructed you to exit the cell block so he could talk to you. You came out as he instructed. He told you to put your hands behind your back and you complied.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

2.

20. Washbourne asked you what your problem was and why you wanted to fight him.
You indicated you did not like Washbourne or the other guards.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page
2.

21. Washbourne told you that you needed to stop causing problems and making
threats.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page
2.

22. When Washbourne escorted you back into s-block, you turned and kicked
Washbourne in the knee.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

23. Kern and Washbourne grabbed you and placed you on the floor to restrain you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

24. While you were on the floor, Detainee David Julien tried to strike Deputy Kern.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

25. Deputy Robinson restrained you while Washbourne went to help Kern.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

26. Washbourne grabbed Julien and placed him against the wall. Washbourne used three strikes to the common peroneal in an effort to get Julien to the floor.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

27. Julien would not go to the floor. Washbourne then used two to three brachial stuns to the neck area and Julien went to the floor.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

28. While Julien was on the floor, he would not give the deputies his hands so Kern applied a mandibular angle pressure point Julien then complied and placed his hands behind his back and was handcuffed and escorted down the hallway.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at pages 1-2.

29. As Washbourne was standing in front of Julien, he came at Washbourne in an aggressive manner, Washbourne placed his right hand on Julien's chest and placed him back against the wall and gave a verbal command not to move off the wall. Julien stated: "If I wasn't handcuffed I would f----- beat you're a-."

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

30. Kern completed a incident report about the events of November 20, 2005.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page
1.

31. Kern did not use excessive physical force against you on November 20, 2005.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page
1.

32. The only force Kern used against you was when he pushed you up against the
wall to restrain you after you kicked Washbourne.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

1.

33. Michael Robinson made an incident report about the events of November 20, 2005.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

2.

34. The only physical force Robinson used was to help restrain you while you were on the floor.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

2.

35. Robinson did not use excessive physical force against you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

36. Washbourne suffered minor injuries to his right knee and was treated at

Mediserve. He was to stay on light duty for several days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 5.

37. Sgt. Alan Johnson, of the Office of Professional Conduct, conducted an internal affairs investigation of the incident as a result of a complaint by Julien.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 9.

38. You were interviewed by Johnson.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 11.

39. You told Johnson that everyone was mad about breakfast being late and that you had told Washbourne that they sent him in amongst all the wolves.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 11.

40. You indicated Washbourne called you out in the hall and asked if you had said you were going to kick his a--. You denied saying that. You indicated you and Washbourne had some words back and forth.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 11.

41. You indicated that Washbourne acted like he was trying to provoke you and threatened to choke you. When Washbourne told you to go back in the barracks, you indicate you turned to go and then Washbourne kicked you on the back of your leg or kind of stepped down on your foot. You stated that you kicked your leg back to get Washbourne's foot off of you.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 11.

42. You indicated Washbourne started choking you and then all the other officers jumped on you. At this point, somebody pushed Julien out into the hall.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 11.

43. Johnson noted that you did not sustain any significant injuries.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 12.

44. Washbourne was found to have engaged in officer misconduct by having used profane language towards you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

20-21.

45. Washbourne was not found to have used excessive physical force towards you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at pages 20-21.

46. On November 21, 2005, you submitted a grievance complaining that your neck and back were hurting and your leg was bleeding but you were never seen. You said it didn't pay to see the nurses because they did not do their job. You asked what happened to the officers that brutalized Julien and you. You asked why they assaulted Julien.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

47. In response, you were told that you would see the doctor on November 22nd and would be given over-the-counter medication to help you feel better until then. You were also told the nurse would be talked to as soon as she came in.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

48. On November 21, 2005, you complained that your grievance had not been answered. You stated officers had not sent your grievances back from the day before although other inmates had received responses to their grievances.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 3.

49. In response, you were told that this would be checked into. You were also told that you were spoken to in person about one grievance but would also receive a written response.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 3.

50. On November 22, 2005, you submitted a grievance stating you wanted to press charges against Washbourne and Kern. You indicated Kern was suspended and you wanted to know why Washbourne was still working. You stated your wrist and face were still hurting and the doctor was only giving you Aleve.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 5.

51. In response, you were told the matter was being looked into. With respect to

medication, you were told that they had no control over what the doctor gave you.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to the Affidavit of Dr. Clay at ¶

7.

52. You were seen by Dr. Howard on November 22, 2005. He noted you were hurting in the back, wrist, and face and had been in a fight. He prescribed Aleve, twice a day, as needed, for a week.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

2.

53. You received the Aleve.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

7.

54. Did you receive any further medical treatment for injuries you received on November 20, 2005?

Answer: Yes _____ No _____.

If you answered yes, please describe in detail the treatment you received.

55. On November 25, 2005, you requested medical attention for a cold.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

6.

56. In response, you were given sinus tablets for five days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 6.

57. On November 27, 2005, you submitted a grievance stating that Kern was not supposed to be working around you and Julien while Kern and Washbourne were supposedly being investigated. However, you said Kern was working in the pod.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 7.

58. In response, you were told that unless you had a new problem with Kern he was

allowed to perform his appointed duties in A pod on the floor.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 7.

59. On November 30, 2005, you submitted a grievance about being charged for seeing the nurse and for medication.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 8.

60. On November 30, 2005, you submitted a grievance asking that the heat be turned up. In response you were informed that the heat was kept at 72 degrees by the computer.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 9.

61. On November 30, 2005, Deputy Charles Wilson overhead someone say he would bust someone's head open if he comes around the corner. Wilson moved to the middle of the day room and asked who was going to bust someone's head open. You stated you had said that toward another detainee in a joking manner. You stated this was your hood. Wilson reminded you that this was the detention center. You then threatened Wilson by saying: "I'll bust your head open." Wilson escorted you into the hallway and you were taken to M-11 and locked-down for the safety and security of the facility.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 3.

62. You were released from lock-down on December 3rd and asked for your property that day. You received your property the same day.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

10.

63. You requested sinus medication on December 3rd and on December 5th Nurse Bradley gave you sinus tablets for five days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 3.

64. On December 6, 2005, you appeared in Washington County Circuit Court and your case was reset for March 14, 2006.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1.

65. On December 7, 2005, you were involved in a fight and were pepper sprayed.

You refused to see the nurse to be assessed for injuries.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 3.

66. On December 10, 2005, you submitted a grievance complaining the person you had been in a fight with had only been locked down for three days while you had been locked down for five days. You stated you both should have been locked down for the same amount of time. In response, you were told Sgt. Fuller had to release you from lock down.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 11.

67. On December 14, 2005, you were transferred to the Arkansas Department of Correction (ADC).

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1.

68. You were incarcerated at the WCDC again on May 22, 2006.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 4.

69. You completed a medical intake questionnaire on May 22, 2006, and indicated you had no health problems.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 4.

70. Your ADC medical records do not indicate any serious back or neck problems.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 5.

71. It appears you sought treatment for back and neck problems on December 18, 2005 (Defendants' Exhibit 5 at page 21). Did you only seek treatment for your back and neck one time at the ADC?

Answer: Yes _____ No _____

If you answered no, please explain and please refer the court to the dates on which you sought treatment and either attach the medical records or refer the court to the pages of Defendants' Exhibit 5.

Detail below any further response you would like to make to the motion for summary judgment. If you have any exhibits you would like the court to consider, you may attach them to this response.

[illegible]

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

EXECUTED ON THIS _____ DAY OF _____ 2007.

ANTONIO LATHON